

**FILED**

**MAY 24 2004**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

**IN THE MATTER OF THE REQUEST  
FOR AGENCY ACTION OF  
EVERGREEN RESOURCES, INC. FOR  
AN ORDER MODIFYING THE ORDER  
ENTERED IN CAUSE NO. 220-4  
AFFECTING CERTAIN LANDS IN  
SECTIONS 9, 14, AND 16 OF  
TOWNSHIP 12 SOUTH, RANGE 10  
EAST, S.L.M., AND PROVIDING FOR  
THE DRILLING OF ADDITIONAL  
WELLS TO ACHIEVE A WELL  
DENSITY TWO WELLS FOR EACH  
DRILLING UNIT OR THE  
EQUIVALENT OF 80-ACRE WELL  
SPACING FOR PRODUCTION OF GAS  
(INCLUDING, BUT NOT LIMITED TO,  
COALBED METHANE) FROM THE  
BLACKHAWK FORMATION IN THE  
LOWER MESAVERDE GROUP IN THE  
CASTLEGATE FIELD OF CARBON  
COUNTY, UTAH**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

Docket No. 2004-005

Cause No. 220-05

This cause came on regularly for hearing before the Board of Oil, Gas and Mining (the **"Board"**) on Wednesday, April 28, 2004, at 10:00 a.m., in the Hearing Room of the Utah Department of Natural Resources at 1594 West North Temple Street, in Salt Lake City, Utah.

The following Board members present and participating in the hearing were: Chairman W. Allan Mashburn, Stephanie Cartwright, J. James Peacock, Kent R. Petersen, Robert J. Bayer; and Douglas E. Johnson. John R. Baza, Associate Director for Oil and Gas of the Division of Oil, Gas and Mining (the **"Division"**) was present and participated in the hearing.

Phillip Wm. Lear of Lear & Lear L.L.P. appeared on behalf of Evergreen Resources, Inc. ("Evergreen"), and Betty C. Brownson, George L. Hampton, III, and Stephen R. Smith appeared as witnesses for Evergreen.

Michael S. Johnson, Assistant Attorney General, represented the Board; and Steven F. Alder, Assistant Attorney General, represented the Division.

The Board took comments from the public. Mr. Brad Crompton from the Utah Division of Wildlife Resources commented regarding sage grouse activity in the Subject Lands. Mr. Dean Shimmin and Jerry Jensen, mineral owners and lessors to Evergreen in the Castlegate Field and in the Subject Lands commented supporting infill-drilling

**NOW THEREFORE**, the Board, having fully considered the testimony adduced and the exhibits received at the hearing, and being fully advised in the premises, makes and enters its Findings of Fact, Conclusions of Law, and Order, as follows:

#### **FINDINGS OF FACT**

1. The Board mailed notice of the April 28, 2004 hearing to interested parties on April 2, 2004, and caused notice to be published in the *Deseret News* and in the *Salt Lake Tribune* on April 4, 2004, and in the *Sun Advocate*, a paper in general circulation in Carbon County, Utah, on April 6, 2004.

2. Evergreen mailed photocopies of the Request for Agency Action to the last known address of all owners having interests in the spaced area to be modified by certified mail, return receipt requested.

3. Evergreen is a Colorado corporation in good standing, having its principal place of business in Denver, Colorado. Evergreen is authorized to do, and is doing, business in the State of Utah.

4. Evergreen owns working interests in the lands that are the subject matter of the Request for Agency Action.

5. The lands pertaining to the proposed spacing modification are situated in Uintah County, Utah, and are more particularly described, as follows:

**Township 12 South, Range 10 East, S.L.M.**

Section 9: N½  
Section 14: NW¼  
Section 16: NW¼

(containing 640.0 acres, more or less)

(hereinafter "**Subject Lands**").

6. The mineral estates in the Subject Lands comprise public domain lands of the United States and of the State of Utah.

7. The Subject Lands are part of the Castlegate Field, a designated field known for the production of gas (including, but not limited to, coalbed methane) from the Blackhawk formation of the Lower Mesaverde Group.

8. By Orders in Cause Nos. 220-2 and 220-4, the Board established 160-acre drilling units comprising public land survey quarter sections, or their equivalent lots, for production of gas (including, but not limited to, coalbed methane) from the common source of supply in the Castlegate Field and authorizing one well in each drilling unit for production from the common source of supply.

9. The common source of supply in the Orders in Cause Nos. 220-2 and 220-4 is the Blackhawk formation of the Lower Mesaverde Group, more particularly described as:

[T]he stratigraphic equivalent of 4,020 feet below the surface of the earth down to 5,300 feet as measured in the Cockrell Oil 1210-0806 #1 (also known as Anadarko Federal 6-8) Well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, Township 12 South, Range 10 East, S.L.M, Carbon County, Utah.

(hereinafter "**Spaced Interval**"). The Lower Mesaverde Group containing the coal bearing beds is uniform and continuous across the Castlegate Field. However, the coal-bearing Blackhawk formation is discontinuous throughout the Castlegate Field. The Blackhawk formation contains coal seams comprising one pool of gas, (including, but not limited to, coalbed methane).

10. Further, the Orders entered in Causes Nos. 220-2 and 220-3 established six exception drilling units (exception tracts) to the 160-acre spacing patterns providing for the production of two wells from the Spaced Interval. The exception drilling units comprise the following described drilling units within the Castlegate Field:

**Township 12 South, Range 10 East, S.L.M.**

Section 10: SE $\frac{1}{4}$   
Section 10: SW $\frac{1}{4}$   
Section 11: SW $\frac{1}{4}$   
Section 11: SE $\frac{1}{4}$   
Section 12: SW $\frac{1}{4}$   
Section 14: NE $\frac{1}{4}$

11. By its Request for Agency Action filed in this matter, Evergreen desires to expand the Orders entered in Causes Nos. 220-2 and 220-3 authorizing two production wells per drilling unit from the Spaced Interval to cover four additional drilling units within the spaced area.

Those additional exception drilling units comprises the following described lands in the Castlegate Field:

**Township 12 South, Range 10 East, S.L.M.**

Section 9: NE¼  
Section 9: NW¼  
Section 14: NW¼  
Section 16: NW¼

12. Geologic and engineering data obtained from existing coalbed methane gas wells on the Subject Lands disclose that a second well is needed to dewater and to efficiently and economically produce gas (including, but not limited to, coalbed methane) from the drillings units.

13. Permitted wells for the drilling units under the increased density pattern in the Subject Lands shall be no fewer than 920 feet from other wells completed and producing from the Blackhawk formation and no closer than 660 feet from the exterior boundary of the 160-acre drilling unit, or such other location on the Subject Lands as may be granted administratively by the Board pursuant to *Utah Administrative Code* R649-3-3.

14. An order modifying the existing spacing orders in the Subject Lands to authorize an additional well to be drilled in the existing 160-acre drilling units comprising the Subject Lands to dewater and/or to produce gas (including, but not limited to, coalbed methane) from the Spaced Interval will promote the public interest, increase ultimate recovery, prevent waste, and protect the correlative rights of all owners.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and of the subject matter of the Request for Agency Action pursuant to Chapter 6 of Title 40 of the *Utah Code Annotated*.

2. The Division gave due and regular notice of the time, place, and purpose of the hearing to all interested parties as required by law and by the rules and regulations of the Board.

3. Evergreen properly served all owners entitled to notice of spacing modifications by mailing copies of the Request for Agency Action to those owners having legally protected interests.

4. A second well to dewater and to efficiently and economically produce gas (including, but not limited to, coalbed methane) from the Spaced Interval in the Subject Lands meets the statutory requirements for production from modified drilling units pursuant to section 40-6-6 (2)—(4) & (6) of the *Utah Code Annotated*.

5. In-fill drilling within the established 160-acre drilling units meets the statutory requirement for drilling units of uniform size and shape within the pool, as required by section 40-6-6(4)(a) of the *Utah Code Annotated*.

6. The terms and conditions sought by Evergreen's Request for Agency Action are just and reasonable, as required by section 40-6-6(5) of the *Utah Code Annotated*.

7. Authorizing in-fill drilling, as opposed to down sizing (down spacing), will protect the correlative rights of all owners in the drilling units on the Subject Lands.

8. An order authorizing the drilling of an additional well in the 160-acre drilling units in the Subject Lands, to dewater and/or produce gas (including, but not limited to, coalbed

methane) from the Spaced Interval will promote the public interest, increase ultimate recovery, and prevent waste, as required by section 40-6-1 of the *Utah Code Annotated*.

### **ORDER**

**IT IS THEREFORE ORDERED** that in order to promote the public interest; to increase the ultimate recovery of the resource; to prevent physical waste of gas (including, but not limited to, coalbed methane); and to protect the correlative rights of all owners:

- A. Evergreen's Request for Agency Action is granted.
- B. The existing spacing orders for the Subject Lands are hereby modified to authorize the drilling of a second well in the drilling units in the Subject Lands for dewatering and producing gas (including, but not limited to, coalbed methane) from the Spaced Interval.
- C. The permitted wells shall be no closer than 660 feet from the drilling unit line with not less than 920 feet between wells producing from the Spaced Interval.
- D. Administrative approval may be granted for exception well locations for topographic, environmental, and archaeological considerations and when "no surface occupancy" stipulations imposed by the landowners (lessors) prohibit drilling at a legal location, without the necessity of a full hearing before the Board.
- E. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63-46b-6 through -10 (Supp. 2003), and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641 (2003).
- F. This Findings of Fact, Conclusions of Law, and Order ("**Order**") is based

exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10 (Supp. 2003), and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109 (2003); and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

**G. Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** The Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63-46b-16 (1998).

**H. Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63-46b-13 (Supp. 2003). The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose



does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63-46b-13 (Supp. 2003).

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled “Rehearing and Modification of Existing Orders” state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100 (2003).

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

I. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

J. The Chairman’s signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ENTERED this 24<sup>th</sup> day of May 2004.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING

  
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Allan W. Mashburn, Chairman

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "Findings of Fact, Conclusions of Law, and Order" for Docket No. 2004-005, Cause No. 220-05 to be mailed with postage prepaid, this 24<sup>th</sup> day of May, 2004, to the following:

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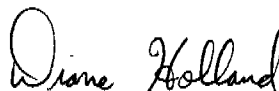
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